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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

CHAMAINE VICTORIA DANIEL,

Defendant and Appellant.

E054001

(Super.Ct.No. RIF10002098)

OPINION

APPEAL from the Superior Court of Riverside County. Raymond C. Youngquist, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed as modified.

Dabney B. Finch, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, and Emily R. Hanks, Deputy Attorney General, for Plaintiff and Respondent.

## I

### INTRODUCTION

On April 1, 2011, a jury found defendant and appellant Chamaine Victoria Daniel guilty of possession of methamphetamine for sale under Health and Safety Code section 11378 (count 1). On April 4, 2011, the trial court found true the allegation that defendant had suffered two prior convictions under Health and Safety Code sections 11378 and 11383, within the meaning of Health and Safety Code section 11370.2. On July 1, 2011, the trial court sentenced defendant to six years in prison. On appeal, defendant contends that the one-year sentence for the prior prison term must be stricken and requests that this court independently review the record of the trial court's in camera proceeding on her motion to traverse the search warrant. The People concede the trial court's sentencing error, and agree that we should review the trial court's in camera review of the confidential search warrant. For the reasons set forth below, we shall strike the one-year prior prison sentence. In all other respects, the judgment will be affirmed.

## II

### STATEMENT OF FACTS

On April 27, 2010, officers searched defendant's home in Riverside. In defendant's bedroom, the officers recovered a methamphetamine pipe, baggies, \$127 in cash, a knife, and two scales with white residue. There was a surveillance camera on a fence in front of the residence. Defendant was inside the residence. Defendant was

searched and officers recovered a baggie containing 8.08 grams of methamphetamine tied into her sarong skirt.

### III

#### ANALYSIS

##### *A. Defendant's Sentence for the Prison Prior Is Stricken*

Defendant contends that there was insufficient evidence supporting her prison prior, and requests that we strike the one-year sentence imposed under Penal Code section 667.5. The People concede that the People elected not to proceed on the prison priors during the bifurcated trial on the priors. The court, therefore, erroneously sentenced defendant on a prior allegation that was not found true.

In this case, defendant requested that the prior allegations be bifurcated and waived her right to a jury trial on the priors. The information alleged two prior convictions for drug sales under Health and Safety Code section 11370.2, subdivision (c). The drug sales priors included: (1) a 1994 conviction under Health and Safety Code section 11378 in San Bernardino County; and (2) a 1997 conviction under Health and Safety Code section 11383, subdivision (c), in San Bernardino County. The information also alleged three prison priors under Penal Code section 667.5, subdivision (b). The prison priors included: (1) a 1994 conviction under Health and Safety Code section 11378 in San Bernardino County; (2) a 1997 conviction under Health and Safety Code section 11383, subdivision (c), in San Bernardino County; and (3) a 2008 conviction under Health and Safety Code section 11377, subdivision (a), in Riverside County.

Before the bifurcated bench trial on the priors, the People stated that they were proceeding on the drug sales priors in count 1 and the 2008 prison prior only. The People conceded that the 1994 and 1997 prison priors had “washed out.” A packet submitted under Penal Code section 969b, marked as Exhibit B, only included information regarding defendant’s 1994 and 1997 incarcerations. After reviewing the evidence, the trial court found the “two three-year prior convictions to be true as alleged in the Information.” When asked about the prison priors, the People stated that only the prior sales convictions were being alleged “[b]ecause at this point all three prison priors will be knocked out.” The court stated, “So all we’re trying is the two three-year priors, 11383 and 11378. Court finds them to be true beyond a reasonable doubt.” The minute order from the proceeding states: “Court finds Enhancement(s) CP CS in count 01 True. DA states that enhancements are correct and that priors are not and will be discussed at time of sentencing.” At the time of sentencing, however, the trial court sentenced defendant to an additional one year for the prison prior.

We agree with both parties that, because the People did not proceed on the prison prior allegations and the allegations were not found true, the trial court erred in sentencing defendant on the prison prior. The one-year sentence for the prison prior, therefore, is stricken.

*B. The Trial Court Properly Denied Defendant's Motion to Traverse the Search Warrant*

Defendant requests that we conduct an independent review of the trial court's in camera proceeding on her motion to traverse the search warrant to determine whether: (1) the confidential informant's sealed probable cause affidavit was properly sealed; (2) the affidavit contained material misrepresentations or omissions; and (3) the affidavit established probable cause for issuance of a search warrant. Under *People v. Hobbs* (1994) 7 Cal.4th 948, the People agree.

We have reviewed the sealed search warrant application, the sealed transcript of the in camera hearing, and the public record of the case. The sealed records indicate sufficient grounds for maintaining the confidentiality of the informant's identity, due to fears for the informant's safety. Moreover, information about the informant is sufficiently woven throughout the warrant application that it is reasonable to seal the entire application, including the affidavit and associated transcripts. Additionally, nothing in the sealed or public records reveal possible inconsistencies or insufficiencies regarding the showing of probable cause. Accordingly, we conclude that the trial court properly denied defendant's motion to traverse the search warrant.

IV

DISPOSITION

The judgment is modified to strike the one-year enhancement imposed under Penal Code section 667.5, subdivision (b). The trial court is directed to amend the

abstract of judgment and its minute order so as to reflect this modification and to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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MCKINSTER  
Acting P. J.

We concur:

MILLER  
J.

CODRINGTON  
J.